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(1) S.B. CIVIL WRIT PETITION NO.5668/2007.
Rajasthan Van Majdoor Mahasangh
Vs.
State & Ors.
..

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(2) S.B. CIVIL WRIT PETITION NO.5669/2007.
Van Shramik Ekta Sangh, I.G.N.P. (CITU)
Vs.
State & Ors.
..

Date of Order :: 7th September 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.S. Saluja, for the petitioners.
....

BY THE COURT:

This order shall govern CWP No.5668/2007 and CWP No. 5669/2007 that have been heard together for the common question involved.

By way of these two petitions, filed respectively by "Rajasthan Van Majdoor Mahasangh" and "Van Shramik Ekta Sangh, I.G.N.P. (CITU)" through their Secretaries, the petitioners seek to challenge the same Notification dated 13.07.2007 (Annexure-3) issued by the respondents for the purpose of engagement of ex-servicemen on contract basis as forest guards.

The averments have been taken in these petitions to the effect that the petitioners are registered trade unions and that the aggrieved members of the unions have authorised their respective

Secretaries to file these petitions. The grievance has been stated in the manner that the members of the respective unions are working on different posts (of cattle guards/class-IV employees) in the department concerned and are not being considered for appointment on the post of forest guard though such posts are lying vacant; and in order to deprive the members of the respective unions from consideration, the posts are sought to be filled up on contract basis from ex-servicemen.

On the petitions being taken up for motion-admission, learned counsel for the petitioner was posed the question about the maintainability and competence of these writ petitions filed by the named petitioners particularly when not a single individual member who could be said to be aggrieved of the action complained of has joined as a party-petitioner. In response, learned counsel submitted that the petitioners are registered trade unions and their members have authorised filing of such petitions; and given some time, he may place on record such authorisation too. Learned counsel further submitted that such petitions are competent and the decision herein shall bind all the members of the petitioner unions. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Asson. etc. Vs. Union of India & Ors.: AIR 1981 SC 298; and to the Full Bench decision of this Court in

the case of the R.S.E.B. Accountant's Associations Rajasthan Jaipur through its Convenor Tek Singh Arora Vs. The Rajasthan State Electricity Board through its Secretary, Vidhyut Bhawan, Jyoti Nagar, Jaipur & Anr.: 1995 (3) WLC 1. Learned counsel has placed for perusal an interim order dated 04.03.2005 passed in S.B. Civil Writ Petition No.3551/2004 (Kamlesh Bohra & Ors. Vs. The State of Rajasthan & Ors.) whereby an attempt on the part of the Municipal Corporation, Jodhpur to make appointments on the post of Fireman *de hors* the rules was prohibited by this Court. Learned counsel submitted that in the present cases too, the appointments are sought to be made *de hors* the rules and the proposition sought to be adopted by the respondents is squarely contrary to the statutory requirements of filling up such posts by the procedure prescribed under the Rajasthan Forest Sub-ordinate Service Rules, 1963; and the members of the petitioner unions shall be deprived of their chances of consideration on the vacant posts of forest guards.

Having examined the material placed on record and having given a thoughtful consideration to the submissions made by the learned counsel for the petitioners with reference to the law applicable to the case, this Court is clearly of opinion that for the cause sought to be agitated, the petitions only at the instance of the named petitioners, even if they be the registered trade unions, cannot be said to be competent; and this Court is not inclined to

issue any writ, order, or direction at the instance of the petitioners.

The very proposition relied upon by the learned counsel for the petitioner with reference to the decision in RSEB Accountant's Union (supra), is sufficient the reason for not entertaining these petitions. The Full Bench of this Court has been pleased to hold, particularly with reference to the fundamental principles of *res judicata,* that once a issue is settled by the Court after adjudication in a petition filed by the association, the decision is binding on all its members and thereafter a few of them cannot file another writ petition. The Full Bench of this Court has observed and held thus:

> "9. **If a petition has once been filed alleging breach of legal right and is decided by the High Court, the decision thereof is binding on all the members and a few of them cannot file another fresh writ petition** in the name of other association. If it is permitted it would be an unending litigation as in the present case the earlier writ petition was filed by a recognised association. The second writ petition has been filed by a few of the members of that very association and if the decision goes in the present writ petition against such unregistered and unrecognised association, then even a third unrecognised association can be formed to file the writ petition. This is not contemplated that such an association has any legal personality under law and as such the writ petition by an unregistered association is not maintainable in the facts and circumstances of the case."

By the very nature of the grievance sought to be raised, it could safely be said that the present petitioners have no locus standi to agitate the cause by way of writ petition; and only such

members of the petitioner unions could question the impugned action of the Government who could show existence and infringement of any of their legal right.

In essence, consideration of the issue as raised by the named petitioners in these petitions would only be rather academic and yet likelihood of its effect on the members of the petitioner unions cannot be ruled out; and if such an effect is an adverse one, then such members, if at all they have got any legal right, would not even have an opportunity of hearing. It has not been shown if such relevant members of the petitioner unions are under any such disability that they cannot approach this Court directly stating their grievance, their legal right, and infringement thereof by the respondents.

The decision in Akhil Bharatiya Soshit Karamchari Sangh (Railway) (supra), wherein the Hon'ble Supreme Court was dealing with the peculiar facts and circumstances of the case in a petition filed under Article 32 of the Constitution of India has no application to the question at hands.

Even from the very order made in Writ Petition No.3551/2004 as relied upon by the learned counsel for the petitioners in support of his contentions, it is but apparent that the said order was passed in a writ petition filed by 22 petitioners when the said petitioners raised the grievance that the Municipal Corporation, Jodhpur while making the appointments to the post

of Fireman was not adhering to the procedure prescribed under the Rajasthan Municipal (Subordinate and Ministerial Service) Rules, 1963. The said order passed by this Court does not support the contentions advanced by the learned counsel for the petitioners on the competence of these petitions and on *locus standi* of the petitioners; but goes rather against the maintainability of these petitions on behalf of the named petitioners.

Both these petitions, CWP Nos. 5668/2007 and 5669/2007, are, therefore, rejected.

At this juncture, learned counsel for the petitioners submitted that the rights of the individual members may be protected. It goes without saying that when these petitions are not entertained on behalf of the named associations/unions, merely for rejection of these petitions as incompetent, there could arise no question of any adverse effect on the rights of the individuals who are not before the Court.

(DINESH MAHESHWARI), J.

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HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.S. Saluja, for the petitioners.

The writ petition is rejected vide order made in S.B.Civil Writ Petition No.5668/2007 (Rajasthan Van Majdoor Mahasangh Vs. State & others).

B.O.

COURT MASTER